

LEGISLATIVE BILL 169

Approved by the Governor April 26, 1983

Introduced by Newell, 13; Kilgarrin, 7

AN ACT relating to revenue and taxation; to amend sections 77-2703 and 81-125, Reissue Revised Statutes of Nebraska, 1943, and section 77-2715.01, Revised Statutes Supplement, 1982; to provide for the setting of income and sales tax rates by the Legislature; to change provisions relating to the limitations of setting tax rates and increments of the rates; to provide procedures; to provide duties; to harmonize provisions; to provide an operative date; and to repeal the original sections, and also section 77-2715.03, Reissue Revised Statutes of Nebraska, 1943, and section 77-2715.02, Revised Statutes Supplement, 1982. Be it enacted by the people of the State of Nebraska,

Section 1. That section 77-2703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2703. (1) There is hereby imposed a tax of two per cent upon the gross receipts from all sales of tangible personal property sold at retail in this state, the gross receipts of every person engaged as a public utility or as a community antenna television service operator, and the gross receipts from the sale of admissions in this state until January 1, 1970, and on and after such date the rate shall be that which is set by the State Board of Equalization and Assessment as provided in section 77-2715.01. When there is a sale, as defined in subdivision (13) of section 77-2702, after March 26, 1974, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

(a) The tax imposed by the provisions of this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts. The tax required to

be collected by the retailer from the consumer constitutes a debt owed by the retailer of this state;

(b) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility;

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases;

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax, and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to adopt and promulgate appropriate rules and regulations prescribing a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the provisions of sections 77-2701 to 77-27,135. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items and shall provide that no tax be collected on sales below a sum of fifteen cents; PROVIDED, that the Tax Commissioner may authorize computation and collection of the tax uniformly on a straight percentage basis in lieu of brackets in situations involving machine or computer billing;

(e) The use of tokens or stamps for the purpose of collecting or of enforcing the collection of the taxes imposed in sections 77-2701 to 77-27,135 or for any other purpose in connection with such taxes is prohibited;

(f) For the purpose of the proper administration of the provisions of sections 77-2701 to 77-27,135 and to prevent evasion of the retail sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he or she takes, in good faith, from the purchaser a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it or takes, in good

faith, an exemption certificate pursuant to subsection (7) of section 77-2705. Receipt of a resale certificate or exemption certificate, taken in good faith, shall be conclusive proof for the seller that the sale was made for resale or was exempt;

(g) Whenever any retailer shall make delivery of any tangible personal property in this state on or after June 1, 1967, it shall be conclusively presumed that such property was sold at retail on or after June 1, 1967, unless the delivery thereof is made pursuant to a contract executed in writing for a fixed price before June 1, 1967, with at least twenty-five per cent of the total price paid prior to June 1, 1967, and such delivery is made prior to August 31, 1967;

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in section 60-301, for periods of thirty days or more, the lessor may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of thirty days or more. If the lessor rents or leases other vehicles for periods of less than thirty days, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner shall prescribe; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision;

(i) If a sales or use tax has been paid on the purchase, storage, use, or other consumption of tangible personal property used in the performance of a construction contract, which contract is with the project owner, is for a fixed price, and has been executed prior to June 1, 1967, and which tangible

personal property is incorporated into the project and transferred to the owner of the structure constructed upon the completion of the contract, the person having paid such sales or use tax shall be entitled to a refund of the amount of taxes so paid. The Tax Commissioner shall by rule and regulation provide the manner and means of applying for such refund and shall require the furnishing of such proof as may reasonably be required to establish the fact that such property was used in the completion of a contract as defined in this subdivision and that any sales or use tax has in fact been paid on such tangible personal property;

(j) The tax imposed by the provisions of this section on the sales of motor vehicles, trailers, and semitrailers as defined in section 60-301 shall be the liability of the purchaser and the tax shall be collected by the county treasurer at the time the purchaser makes application for the registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, trailer, or semitrailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed hereunder, and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner shall prescribe, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement or who willfully falsifies any such statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, trailer, or semitrailer in this state and does not register it for operation on the highways of this state within twenty days of the purchase thereof, the tax imposed by the provisions of this section shall immediately thereafter be paid by the purchaser to the county treasurer. The county treasurer shall report and remit the tax so collected to the Tax Commissioner at such times as the Tax Commissioner may require by rule and regulation. The county treasurer shall deduct and withhold for the use of the county general fund the collection fee permitted to be deducted by any retailer

collecting the sales tax; PROVIDED, this collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax; and

(k) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by the provisions of this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by the provisions of this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased, leased, or rented from any retailer on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of said lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer or leased or rented from another person for such purpose is liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability is not extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of sections 77-2701 to 77-27,135 relating to the sales tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to subdivision (b) of this subsection is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting tangible personal property for storage, use, or other consumption in this state, shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to said persons such authority as is necessary to collect any

use tax which is due and payable to the State of Nebraska. The Tax Commissioner shall require of all persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. Such collectors of the use tax shall deduct and withhold from the amount of taxes collected three per cent thereof as reimbursement for the cost of collecting the tax, but such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the provisions of sections 77-2701 to 77-27,135 and to prevent evasion of the use tax, it shall be presumed that tangible personal property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) It shall be further presumed in the absence of evidence to the contrary, that tangible personal property shipped or brought to this state by the purchaser after June 1, 1967, was purchased from a retailer on or after that date for storage, use, or other consumption in this state.

Sec. 2. That section 77-2715.01, Revised Statutes Supplement, 1982, be amended to read as follows:

77-2715.01. (1) (a) Commencing in 1984 the Legislature shall annually on or before November 15 of each year, the State Board of Equalization and Assessment shall set the rate of the income tax imposed by section 77-2715 for the taxable year beginning in the subsequent calendar year, and the rate of the sales tax imposed by subsection (1) of section 77-2703 which will be effective from January 1 through December 31 of the succeeding year, except that for the period May 1 through December 31, 1982, the rate of the sales tax shall be three and one half per cent.

The rates in effect on January 1, 1984, shall remain in effect until permanent rates are set by the Legislature in accordance with the provisions of this act.

Recognizing that an adequate cash flow is necessary to maintain the orderly implementation of various legislative acts; it is mandatory that the funding of those acts which have a fiscal impact beyond a current appropriations year be considered when setting the sales and income tax rates. Accordingly, the purpose of this subsection is to provide that the State Board of Equalization and Assessment shall set rates based on appropriations and the express obligations of the legislature for the two succeeding calendar years following the rate-setting date. Such action will provide an adequate cash flow; the orderly implementation of the funding of acts as intended by the Legislature; and eliminate drastic fluctuations in the state sales and income tax rates:

(a) In fixing the rates, the State Board of Equalization and Assessment shall first determine the status of all appropriations and express obligations for the next two succeeding calendar years following the rate-setting date which must be financed from the receipts from the sales and use taxes; the individual and corporation income and franchise taxes and other miscellaneous receipts to the General Fund; from a certified statement of all appropriations and express obligations for the next two succeeding calendar years following the rate-setting date made by the most recent regular session of the Legislature; which statement the Director of Administrative Services shall prepare and furnish prior to the convening of such board:

(b) If the Legislature should meet in a special session during any year, the board shall add to the appropriations and express obligations as certified pursuant to subdivision (a) of this subsection; the appropriation for the legislative session; all miscellaneous claims; deficiency bills; and all emergency appropriations and express obligations:

(c) The board shall then determine the balance of the General Fund at the beginning of the period under consideration and the estimated receipts to the General Fund from all sources other than the sales, use, income, and franchise taxes for this period:

(d) (b) The Legislature board shall then set the rates of the sales tax and income tax so that the estimated funds available pursuant to subdivision (c) of this subsection plus estimated receipts from the sales, use, income, and franchise taxes will be not less than ~~two~~ three per cent nor more than seven per cent in excess of the appropriations and express obligations for the next two succeeding calendar years, following the

rate-setting date as determined pursuant to subdivisions (a) and (b) of this subsection. The purpose of this subdivision is to insure that there shall be maintained in the state treasury an adequate General Fund balance, considering cash flow, to meet the appropriations and express obligations as certified as provided in subdivision (a) of this subsection of the state.

(c) (e) The rates of the sales and income taxes shall be fixed so that the total sales and use taxes levied will as nearly as possible equal the total individual income tax levied for the calendar year for which the rates so fixed will be effective, except when a change in the sales and use tax rate or individual income tax rate would be required solely to meet the provisions of this subdivision. The Legislature board shall set the rates in such a manner that total sales and use tax revenue should not exceed total individual income tax revenue in any particular year.

(d) (f) For purposes of this subsection, total sales and use taxes levied shall mean the total state sales and use tax liability of all taxpayers for the calendar year minus total food sales tax credits attributable to the same period. Total income and franchise taxes levied shall mean the total state income and franchise tax liability of all taxpayers for the calendar year, before deduction of food sales tax credits.

(e) (g) The sales tax rate so fixed by the Legislature board shall be an increment of one half one-fourth of one per cent, and the income tax rate so fixed shall be an increment of one half of one per cent.

(f) (h) For purposes of this section, express obligation shall mean an obligation which has fiscal impact identifiable by a sum certain or by an established percentage or other determinative factor or factors.

(2) The board shall meet (a) within fifteen days after the adjournment of each regular session of the legislature; (b) within thirty days after each special session of the legislature; and (c) not later than the later of (i) sixty days after passage and approval or (ii) fifteen days prior to the effective date of any changes in the provisions of the Internal Revenue Code of 1954 and amendments thereto; other provisions of the laws of the United States relating to federal income taxes; or the rules and regulations issued under such laws; if such federal changes would increase or decrease the total projected income and franchise taxes levied for any twelve-month period by an amount equal to or greater than the amount of revenue raised from such sources by a one half per cent tax rate increment and shall determine whether the rates for sales tax and income tax must be changed. At any

meeting of the board held due to changes in federal law, the board shall adjust the income tax rate so that the total income and franchise taxes levied shall as nearly as possible equal the income and franchise taxes which would have been levied if there had been no change in the federal law. The Speaker of the Legislature and the chairpersons of the Legislature's Executive Board, Revenue Committee, and Appropriations Committee shall meet with the Tax Commissioner within ten days after the fifteenth of July and October of each year and shall determine whether the rates for sales tax and income tax should be changed. In making such determination the board they shall recalculate the requirements pursuant to the formula set forth in subsection (1) of this section, taking into consideration the appropriations and express obligations for any such special session, all miscellaneous claims, deficiency bills, and all emergency appropriations.

In the event it is determined by a majority vote that the board determines the rates must be changed as a result of a such regular or special session or as a result of a change in the provisions of the Internal Revenue Code of 1954 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, and the rules and regulations issued under such laws, they shall petition the Governor to call a special session of the Legislature to make whatever rate changes may be necessary. such sales tax rate shall be made effective at the beginning of any calendar month within the current calendar year and such income tax rate shall be effective for the current taxable year.

(3) Public notice of any meeting of the board at which sales and income tax rates are to be considered shall be given at least ten days prior to the meeting; by a news release for statewide distribution; by publication in a legal newspaper of general circulation in the state; and in such other forms as the Tax Commissioner shall deem appropriate. The notice shall contain an agenda of matters to be taken up; and a statement that all written reports and fiscal data to be considered by the board at the meeting shall be available to the public at the Tax Commissioner's office during normal business hours at least two business days prior to the meeting.

Sec. 3. That section 81-125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-125. The Governor shall on or before January 15 present to the Legislature a complete budget for all the activities of the state receiving appropriations or requesting appropriations, except that the Governor during his or her first year in office

shall present such budget to the Legislature on or before February 1. Such budget shall be a tentative work program for the coming biennium, containing a full and itemized report of the expenditures from appropriations made by the previous Legislature and the items which the Governor deems worthy of consideration for the coming biennium, for the respective departments, offices, and institutions, and for all other purposes; the estimated revenue from taxation, the estimated revenue from sources other than taxation, an estimate of the amount required to be raised by taxation and the sales and income tax rates necessary to raise such amount, and recommendations as to deficiency funding requirements pursuant to section 50-423. The budget as transmitted to the Legislature shall show the estimated requirements for each activity of the state as prepared by the Department of Administrative Services and the final recommendation of the Governor. The budget shall comprise the complete report to the Legislature of all appropriations made by the previous Legislature and expenditures therefrom by all agencies receiving appropriations, and the report of expenditures contained in the budget shall be in lieu of all other biennial or other financial reports required by statute to the Legislature by expending agencies of appropriations and expenditures for their own activities, except the biennial report of the State Treasurer and Director of Administrative Services.

Sec. 4. This act shall become operative on January 1, 1984.

Sec. 5. That original sections 77-2703 and 81-125, Reissue Revised Statutes of Nebraska, 1943, and section 77-2715.01, Revised Statutes Supplement, 1982, and also section 77-2715.03, Reissue Revised Statutes of Nebraska, 1943, and section 77-2715.02, Revised Statutes Supplement, 1982, are repealed.